

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE
STATE OF MONTANA

* * * * *

school District No. 73,

Appellant,

V.

OPINION AND ORDER

Patricia Hedges, Guardian
for Aaron and Justin Hedges,

OSPI 181-89

Respondent .

* * * * *

This matter is before the State Superintendent of Public Instruction on appeal of the October 13, **1989**, Findings of Fact, Conclusions of Law and Order of Missoula County Superintendent of Schools, Rachel A. Vielleux, acting for the Lake County Superintendent of Schools, pursuant to Section **20-3-212**, MCA. This Appeal was dated November **14, 1989**, and filed with this Superintendent by mail subsequent to that date, in excess of 30 days after the County Superintendent's Order.

ARM 10.6.122 states:

"(1) An appeal shall be taken by filing a notice of appeal with the state superintendent of public instruction and a copy of such notice of appeal with the county superintendent. Failure of any party to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal but

1 is grounds for such action as the state superintendent deems
2 appropriate, which may include dismissal." (emphasis added)

3 ARM 10.6.127 (1) states:

4 "Appellant shall appeal from the order of the county
5 superintendent of schools to the state superintendent of public
6 instruction within 30 days after the rendering of such order
7 unless the time is shortened or extended by an order entered by
8 the state superintendent upon good cause showing. If a party
9 petitions for a re-hearing before they appeal the final decision
10 to the state superintendent, then the 30-day statute of
11 limitations shall be tolled until a final decision has been
12 rendered by the county superintendent." (emphasis added)

13 The above-cited Administrative Rules of Montana (ARM) were
14 adopted by the Superintendent of Public Instruction under
15 authority granted in Section 20-3-107, MCA, and govern the
16 procedure of an appeal. As stated by this Superintendent in
17 Ladene Mangold vs. Trustees, Chouteau County Elementary School
18 District No. 11, High School District No. 2, OSPI 142-87, the
19 administrative rule makes the time period allowed for appeal a
20 jurisdictional matter. Failure to file the appeal within the 30-
21 day period allowed by ARM 10.6.127 deprives the State
22 Superintendent of jurisdiction to hear the appeal. Appellant
23 School District made no request for an extension of time to file
24 an appeal until after the 30-day period had run.

25 The time limits for filing an appeal are mandatory and

jurisdictional. An appellant has a duty to perfect an appeal in the manner and within the time limits provided by law. Absent such compliance, this Superintendent does not acquire jurisdiction to entertain and determine an appeal. Price v. Zunchich, 188 Mont. 30, 612 P.2d 1296 (1980).

This appeal was not filed within the 30-day period required under ARM 10.6.122 and 10.6.127. The Montana Supreme Court has said that the words "filing with" are not equivalent to "mailing them to". Schaffer vs. Champion Home Builders Company, 44 St. Reptr. 2196, 2198. This appeal was signed and mailed after the 30-day period.

ORDER

This State Superintendent of Public Instruction hereby dismisses this appeal for lack of jurisdiction.

DATED this 13 day of December, 1989.

Nancy Keenan
Nancy Keenan
State Superintendent of Public
Instruction

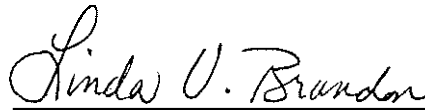
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 13th day of December, 1989,
a true and exact copy of the foregoing was deposited in the mail,
postage prepaid, to the following:

Pamela Hamilton
Chairman, Board of Trustees
Swan Lake and Salmon Prairie School
School District 73
Swan Lake, MT 59911

Patricia Hedges
P.O. BOX 114
Swan Lake, MT 59911

Glennadene Farrell
County Superintendent of Schools
Lake County
County Courthouse
Polson, MT 59860



Linda V. Brandon
Paralegal Assistant